

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:03-cr-142-LJM-DKL
)	
CARLOS ESPARZA,)	
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the Court pursuant to the Order entered by the Honorable Larry J. McKinney designating the duty Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed on July 29, 2013. Pursuant to that Order, the Court herein submits proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. ' ' 3401(i) and 3583(e). Proceedings were held on August 14, 2013 and November 1, 2013, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*.¹

On August 14, 2013 and November 1, 2013, Carlos Esparza (AEsparza@) appeared in person and by appointed counsel, Joe Cleary . The government appeared on both dates by Josh Minkler, Assistant United States Attorney. U. S. Parole and Probation appeared by Diane Asher, U. S. Parole and Probation officer on August 14, 2013 and by Holly Barrineau, U. S. Parole and Probation officer on November 1, 2013.

¹ All proceedings were recorded by suitable sound recording equipment unless otherwise noted. *See*, Title 18 U.S.C. ' 3401(e).

The Court conducted the following procedures in accordance with Rule 32.1(b)(2), Fed. R. Crim. P. and Title 18 U.S.C. ' 3583:

1. Esparza was re-advised of the nature of the violations alleged against him and acknowledged receipt of the notice of said allegations.
2. On August 14, 2013 Esparza stipulated that he committed Violations 1 through 7, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on July 29, 2013 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
<u>1</u>	<u>AtThe defendant shall refrain from any unlawful use of a controlled substance.@</u>
<u>2</u>	<u>AtThe defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.@</u>
<u>3</u>	<u>"The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered."</u> <u>As previously reported to the Court, on July 21, 2012, Mr. Esparza provided a urine specimen which tested positive for opiates; however, no medication was indicated on the chain of custody form. Mr. Esparza admitted taking pain medication and a Xanax that were not prescribed to him. He signed an admission report of positive urinalysis. A subsequent drug test collected on August 6, 2012, tested negative. In addition, on August 6, 2012, Mr. Esparza admitted consuming alcohol to excess on August 3, 2012. On October 21, and November 1, 2012, Mr. Esparza provided urine specimens which tested positive for opiates; however, no medications were indicated on the chain of custody forms. Lastly, on January 8, 2013, Mr. Esparza provided a urine specimen which tested positive for cocaine.</u> <u>On June 5, 2013, Mr. Esparza provided a urine specimen which confirmed positive for cocaine and morphine. A subsequent drug screen collected June 19, 2013, tested negative.</u>
<u>4</u>	<u>AtThe defendant shall participate in a program of testing and/or treatment for</u>

substance abuse as directed by the probation officer.@

As previously reported to the Court, on July 26, 2012, Mr. Esparza failed to attend a scheduled individual substance abuse counseling appointment. In addition, on August 6, and September 14, 2012, Mr. Esparza failed to report for random drug screens.

On May 5 and 7, 2013, Mr. Esparza failed to report for random drug screens.

5 AThe defendant shall not commit another federal, state, or local crime.@

As previously reported to the Court, on January 5, 2013, Mr. Esparza was arrested for the offense of Operating a Vehicle While Intoxicated, Operating a Vehicle with a BAC of more than .08% but less than .15%, and Driving While License Suspended. This case was filed in Marion County Superior Court under Cause Number 49-F10-1301-CM-001365. On July 9, 2013, Mr. Esparza pled guilty to Count 1 and was sentenced to 60 days jail, 40 suspended, and 180 days probation.

6 AThe defendant shall participate in a program of mental health treatment, as directed by the probation officer.@

Mr. Esparza initially scheduled an appointment for a mental health evaluation as instructed; however, he has failed to attend the evaluation or re-schedule the required evaluation as instructed.

7 AThe defendant shall be monitored by Radio Frequency (RF) Monitoring for a period of up to 120 days, to commence as soon as practicable, and shall abide by all technology requirements. The defendant shall pay all or part of the costs of participation in the program as directed by the court or probation officer. This form of location monitoring technology shall be utilized to monitor the following restriction on the defendant-s movement in the community as well as other court-imposed conditions of release; the defendant shall be restricted to his residence at all times except for employment; education; religious services; medical; substance abuse, or mental health treatment; attorney visits; court-ordered obligations; or other activities as pre-approved by the probation officer.@

On June 23, 2013, Mr. Esparza failed to return to his residence by 11:30 p.m. He arrived home 55 minutes late, returning at 00:25 a.m. on June 24, 2013. Mr. Esparza stated he left his residence late in order to report to Volunteers of America for a random drug screen which caused him to return home after his scheduled time.

3. The highest of the Violations as alleged are Grade B violations, pursuant to U.S.S.G. ' 7B1.1(a)(2).
4. The criminal history category for Esparza is IV.
5. The term of imprisonment applicable upon revocation of Esparza's supervised release, therefore, is 18-24 months=imprisonment. *See*, U.S.S.G. ' 7B1.4(a).
6. On August 14, 2013, the parties agreed that disposition of this matter should be held in abeyance for at least 60 days.
7. On November 1, 2013, pursuant to the recommendation of United States Probation Office and finding no further violations, the parties agreed that Esparza should be continued on Supervised Release.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Carlos Esparza, violated the above-delineated condition in the Petition.

Esparza's supervised release is therefore **CONTINUED** under the same conditions as previously imposed.

The Magistrate Judge requests that a U. S. Parole and Probation Officer, prepare for submission to the Honorable Larry J. McKinney, as soon as practicable, a supervised release judgment, in accordance with these findings of facts, conclusions of law and recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. ' 636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. Any party desiring said review shall have fourteen days after

being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation continuing Carlos Esparza's supervised release under the conditions previously imposed

IT IS SO RECOMMENDED this 11/06/2013



Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana

Distribution:

Josh J. Minkler
Assistant United States Attorney

Joe Cleary
Indiana Community Federal Defender

U. S. Parole and Probation

U. S. Marshal